

**BEFORE THE
FEDERAL COMMUNICATION COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
OSIRUS COMMUNICATIONS, INC.)	
)	CC Docket No. 96-45
Petition for Waivers of the Commission's)	
Rules to Participate in NECA Pools and)	DA 07-4873
Tariffs and to Obtain Accelerated USF)	
Support)	

**COMMENTS OF
ALLBAND COMMUNICATIONS COOPERATIVE
IN OPPOSITION TO PETITION FOR WAIVERS
AND
ALLBAND REQUEST FOR CLARIFICATION**

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January 3, 2008

I. INTRODUCTION AND SUMMARY OF POSITION

Allband Communications Cooperative (Allband) opposes the October 2, 2007, petition filed by Osirus Communications, Inc. (Osirus) in this docket and requests that the Commission immediately deny Osirus' petition.¹ Allband also requests certain clarifications from the Commission as described later herein.

Allband opposes Osirus' petition, and requests its prompt denial, because:

1. Allband, an existing ILEC in Michigan, is already planning to serve all but one of the unserved areas described in Osirus' petition.
2. Allband already meets all of the requirements of this Commission and the Michigan Public Service Commission ("MPSC") to serve the unserved areas.

Allband:

- Obtained the relevant waivers of the Commission's Rules in 2005, that Osirus now seeks to duplicate in this docket in 2007;
- Has an MPSC license to serve all of the unserved areas;
- Is combining the unserved areas with its existing ILEC study area in Michigan in compliance with the Commission's Orders; and
- Meets the stricter requirements of NECA to include the additional areas in the NECA pools and tariffs and has provided such documentation to NECA.

¹ The Osirus petition (pp 1-2) requests waivers of Commission rules to allow Osirus to become a member of the National Exchange Carrier Association ("NECA") and to participate in NECA tariffs and pools, and to begin receiving high-cost Universal Service Fund ("USF") support. The Osirus petition specifically seeks waivers of the definition of "telephone company" in Sections 69.2(hh) and 69.601 and the annual election filing deadline in Section 69.3(e)(6); a "declaratory ruling" that a waiver of the definition of "study area" is not necessary under the Commission rules; waivers of Sections 36.611 and 36.612 of the Commission's historical cost rules, of USF certification deadlines in Section 54.314(d) of the Commission rules, and of data filing deadlines under Sections 54.301(b) and 54.903(a) of the Commission rules. Osirus also requests that the Commission grant on its own motion "any additional waivers . . . necessary to expedite Osirus' receipt of USF support and participation in NECA pools and tariffs . . .".

3. Allband has already begun the work (network design, financial analysis, RUS loan) to provide service to the areas in question.

The Commission's immediate denial of Osirus' petition will resolve any regulatory delay caused by the petition and allow Allband to concentrate on providing high quality basic and advanced services at reasonable rate levels, as it had planned, to these unserved areas in Michigan. This will further the public interest because it will result in the prompt provision of services by Allband for the local residents in these unserved areas, including the provision of new and reliable access to emergency services, and needed communications infrastructure to promote community services, economic development, and educational services.

Osirus is currently a Competitive Local Exchange Carrier (CLEC) in Michigan and has been granted a license to serve the areas described in its petition by the MPSC. Denial of Osirus' petition by the Commission does not mean that Osirus cannot serve the subject areas. Osirus may still serve the areas as a CLEC.

II. BACKGROUND

A. Allband's Plan (Phase 1)

On November 5, 2003, Allband Communications Cooperative ("Allband") was incorporated as a non-profit cooperative to provide telecommunications services to previously unserved areas in Michigan. Like the numerous Cooperatives that were formed in the past all over the United States, Allband's objective was to serve the public interest by bringing telecommunications services to its members/customers in unserved areas of Michigan.² The initial step (Phase 1) in providing service to consumers (that were without a service provider) was to construct facilities and provide ubiquitous service in Allband's newly formed Robbs Creek Exchange. Attachment 2, page 1, provides the location of Allband's current Incumbent

² See Attachment 1 – Statement of John Reigle, President of Allband Communications Cooperative.

Local Exchange Carrier (“ILEC”) service area in Michigan,³ and also the locations where Allband planned to expand its ILEC services into additional unserved areas in Michigan under its Phase 2 plan. Attachment 2, page 2, also shows the areas where Osirus has requested a study area waiver, and the overlap with Allband’s Phase 2 areas.

Because of its low customer density (1.7 access lines per square mile), the creation of Allband would not have been possible without the assistance of the MPSC, the Federal Communications Commission (“FCC”), the Rural Utilities Service (“RUS”) loan program of the United States Department of Agriculture, the National Exchange Carrier Association (“NECA”) and the Universal Service Administrative Company (“USAC”). These groups worked in concert to help Allband and its members during Phase 1 of its plan to serve the unserved areas in Michigan.

The regulatory history, as summarized next, establishes that Allband’s dedicated efforts to provide services in the unserved areas in Michigan has been far more advanced and long-term (as compared to Osirus):

- On November 3, 2003, after extensive planning and organizational efforts, Allband filed its Articles of Incorporation with the State of Michigan.
- On July 29, 2004, Allband filed a complete loan application with the USDA Rural Development.
- On August 31, 2004, the MPSC in Case No. U-14200 granted Allband a temporary license to provide service to the area Allband planned to serve in Phase 1 (the Robbs Creek Exchange). A permanent license was granted by the MPSC in Case No. U-14200 on December 2, 2004 (Attachments 3 and 4).

³ The Phase 1 service territory is 177.4 square miles and covers portions of the Alcona, Alpena, Montmorency and Oscoda counties in Michigan.

- Allband obtained RUS funding on October 7, 2004 and began constructing an all fiber, passive optical state of the art telecommunications network that would allow Allband not only to provide standard telecommunications services, but also ubiquitous broadband and other advanced services.⁴
- On August 11, 2005, the FCC granted Allband's waiver of certain of the FCC's rules and allowed Allband to be treated as an ILEC for NECA pooling and Universal Service purposes.⁵
- On November 10, 2005, the MPSC in Case No. U-14659 granted Eligible Telecommunications Carrier (ETC) status to Allband (Attachment 5 hereto).
- Allband joined the NECA pools in December 2006. This action allowed Allband to (a) minimize administrative expenses and (b) maintain reasonable and stable access rates.
- USAC and NECA recognized Allband as an ILEC and began providing Interim Common Line Support and Local Switching Support in December 2006. Allband will begin receiving High Cost Loop Support in January 2008.⁶ This support is being used and will be used by Allband to recover a substantive portion of the ongoing high cost of providing ubiquitous network facilities and thus to enable Allband to maintain reasonable local exchange consumer rate levels (\$19.90 per month for residence and business).

⁴ RUS provided interim financing on October 7, 2004. On August 18, 2005, RUS officially announced a loan for \$8 million to fund Allband's Phase 1 fiber to the home network. In October of 2005, Allband began construction and on November 30, 2005, the first cooperative member/customer was connected. A ubiquitous network for all customers in the Robbs Creek exchange will be completed in 2008.

⁵*In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission Rules*, WC05-174 released August 11, 2005.

⁶ Allband filed a waiver to enable Allband to begin receiving High Cost Loop Support during the quarter Allband commenced service to its first customer (4th Quarter, 2006). However, to date, the Commission has not acted on this waiver. See Allband Communication Cooperative Petition for Waiver of Sections 36.611 and 36.612 and Associated Provisions of the Commission Rules, CC Docket No. 96-45, filed September 5, 2006.

B. FCC Waivers

Osirus in this docket is now asking this Commission in 2007 for waivers that Allband already obtained from this Commission in its August 11, 2005 order in docket number WC05-174 (or other waivers sought by Allband in 2006, as described in Fn 7, *supra*). More specifically, this Commission's 2005 order granted Allband's request for waivers of Sections 69.2(hh) and 69.601 of the FCC rules, and concerning the definition of incumbent local exchange carrier ("ILEC") in Part 36 and Section 54.5 of the FCC rules to permit Allband to receive Universal Service support and "to be treated as an incumbent LEC for the purposes of receiving universal service support and participating in National Exchange Carriers Association ("NECA") tariffs and pools" (order, page 1). This Commission's order also granted Allband's request for waiver of certification and data filing deadlines contained in Part 54 of the Commission's rules. The order (page 1) stated:

... Based on the record, we find that all of these waivers are in the public interest because they will facilitate the ability of Allband to serve previously unserved areas.

Other portions of the order establish that Allband as of the 2005 order is "to be treated as an incumbent LEC for the purposes of imposing access charges and receiving federal universal service support". The August 11, 2005, order stated in pertinent part:

4. On June 14, 2005, Allband filed a letter in this proceeding stating its intent to seek federal universal service support, and requesting waiver of any sections of Parts 36 and 54 of the Commission's rules necessary for it to be treated as an incumbent LEC for the purposes of imposing access charges and receiving federal universal service support.¹¹ Allband also requested waiver of certification and data filing deadlines contained in Part 54 of the Commission's rules that would prevent it from beginning to receive high cost loop, local switching, or interstate common line support on the date on which it would otherwise be entitled to receive such support.¹² (fns omitted) (FCC order, pp 2-3)

...

6. We conclude that it is consistent with Commission precedent and the public interest to grant the waivers sought by Allband, as set forth below . . . Because Allband is a newly established carrier and is not a successor or assign of an incumbent LEC,¹⁹ it does not meet the definition of incumbent LEC for purposes of the Act or these rules. In order to be treated as an incumbent LEC for purpose of receiving universal service support and imposing access charges, therefore, Allband seeks waiver of these rules. (Fns omitted) (FCC order, p 3)

. . .

7. . . . We find that it is consistent with these purposes and the Commission's *2004 Skyline Order*²² to waive Part 36 and sections 54.5 and 69.2(hh) of the Commission's rules to the limited extent necessary to permit Allband to be treated as an incumbent LEC for purposes of receiving universal service support and participating in NECA tariffs and pools.²³ . . . (FCC order, p 4, fn 22 omitted)

²³In the *2004 Skyline Order*, the Commission waived the definition of incumbent LEC in Parts 36, 54, and 69 of the Commission's rules to permit Skyline Telephone to receive high-cost universal service support and to participate in NECA pools and tariffs. *See 2004 Skyline Order*, 19 FCC Rcd at 6771-71, paras. 25-28.

This Commission's August 11, 2005 order, page 5 (paragraphs 8 and 9), expressly waived its rules to permit Allband to participate in NECA tariffs and pools, waived "the definition of incumbent LEC" to permit Allband to be "treated" as an ILEC "to permit Allband to receive universal service support" and waived filing and state certification deadlines as stated in the order. The order (p 5, ¶8) reiterated that:

. . . These waivers serve the public interest in promoting universal service by helping to bring the benefits and conveniences of telecommunications to currently unserved areas.²⁹ (fn omitted)

Importantly, the 2005 FCC order (p 4, fn 21) also stated in relevant part that:

. . . A carrier must be a rural incumbent LEC to receive support based on its own costs. . . . In order to be a member of NECA and to participate in the NECA tariffs and pools, a carrier must be an incumbent LEC. *See* 47 C.F.R. ¶ 69.2(hh).

The order (pp 5-6, paragraph 10) also found that a carrier must apply to the FCC for a waiver of the FCC's 1984 study area boundary freeze if it wishes to sell or purchase additional exchanges, but that the FCC's 1996 Study Area Waiver Exceptions Order (cited in fn 34, p 5 of the FCC order) held that carriers are not required to seek study area waivers if one of three (3) situations exist, of which Allband meets the second test (i.e. a waiver request is not required if "a company is combining previously unserved territory with one of its existing study areas in the same state".⁷ The order (p 6, paragraph 10) also stated in relevant part:

. . . In the *2004 Skyline Order*, the Commission clarified that a carrier must apply for a study area waiver if it seeks to create a new study area within one or more existing study areas.³⁶ The record demonstrates that the area in which Allband intends to construct and operate its new exchange is not within the study area of any incumbent LEC.³⁷ Accordingly, because Allband does not intend to create a new study area from within one or more existing study areas,³⁸ and because it is a separately incorporated company establishing a study area for a previously unserved area, no study area waiver is required to establish a new study area for its proposed exchange. (fns omitted)

This Commission's 2005 order thus demonstrates that Allband has been recognized by the FCC "to be treated as an ILEC" since 2005, and that Allband does not need to seek a waiver to expand its study area to service the seven (7) presently unserved areas for which Allband has received an MPSC license, and which areas are not within the study area of any incumbent LEC.

Based upon the above approvals, Allband successfully designed, financed, constructed, and commenced providing a wide array of the most updated "state of the art" basic local exchange and associated communications services in the Robbs Creek Exchange (Phase 1). This activity included successfully applying for and receiving approved construction loans from the United States Department of Agriculture Rural Development agency, completing the necessary

⁷ The order, p 5, fn 32, defines a study area as follows: "A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state."

engineering design and construction, commencing operation of services to this large unserved area, and obtaining financial support from the Universal Service Fund.

C. Allband's Plan (Phase 2)

Allband began planning for the second phase of its long-term plan in early 2007, which is to provide the same high quality universally available basic, advanced and interexchange network services at just reasonable and affordable rate levels in other unserved areas in Michigan. The customers to be served are located in the following counties in Michigan and will be served within the proposed Allband exchanges listed below. (See Attachment 1 for a map of the proposed Phase 2 Allband service area):

- Oscoda and Ogemaw Counties Big Creek Exchange
- Presque Isle County Fox Creek Exchange
- Alcona and Iosco Counties McDonald Creek Exchange
- Gladwin County Mosquito Alley Exchange
- Oscoda County Old Baldy Exchange
- Presque Isle County Thunder Bay Exchange
- Presque Isle and Montmorency Counties Upper Tomahawk Creek Exchange

Actions undertaken by Allband to date to implement Phase 2 of its service plan are:

- Completion of a network design and financial analysis.
- Application for a license to serve the Phase 2 areas.⁸ A temporary license was granted on October 25, 2007, and a permanent license was granted by the MPSC on November 8, 2007.⁹

⁸ Application of Allband Communications Cooperative, dated August 31, 2007, in MPSC Case No. U-15385.

⁹ In the matter of the application of Allband Communications Cooperative for a license to provide basic local exchange service in seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw and Oscoda counties, MPSC orders in Case No. U-15385, Attachments 6 and 7 hereto.

- A completed RUS (USDA Rural Development) loan application will be filed in January 2008.
- The MPSC has provided documentation to NECA that the area to be served by Allband in Phase 2 of its service plan has never been served by another company.
- Required documentation for an existing ILEC (Allband) to provide service in a previously unserved area was provided to NECA on December 13, 2007.¹⁰ This documentation is required by NECA in order to include these areas in the NECA pools and to receive universal service support.

Allband has undertaken extensive advanced economic and engineering planning for purposes of providing basic local exchange and associated communications services in the subject seven (7) additional service areas, and is prepared to proceed diligently and expeditiously in providing service in these areas. Residents in these areas presently do not have access to just, reasonable, and affordable residential telecommunications service, a situation Allband is experienced and prepared to promptly correct.

Allband has clearly demonstrated the capability and expertise to serve the customers in the additional unserved areas in Michigan, and is prepared to undertake arrangements to begin construction of the necessary facilities by June 2008.

III. THE OSIRUS COMMUNICATIONS, INC. (OSIRUS) PETITION SHOULD BE DENIED BY THE COMMISSION

The Osirus petition requests that the Commission waive certain of its rules to allow Osirus to be treated as an ILEC so that it can participate in NECA pools and tariffs and receive USF support for telecommunications service it proposes to provide in Alcona, Cheboygan,

¹⁰ NECA Cost/Average Schedule Issue Number 8.5 – Study Area Waivers and Reporting Data for Lines Served Outside Frozen Study Area Boundaries dated 5/96 and revised 10/96, 6/97, 1/06 (Attachment 8).

Gladwin, Montmorency, Oscoda, Ogemaw and Presque Isle Counties of Michigan.¹¹ Osirus' petition should be denied by the Commission because Allband is, as an ILEC, already planning to provide service to seven of the unserved areas for which Osirus has requested waivers, and has combined those service areas to Allband's existing study area in Michigan. Allband's Phase 2 plan to provide service to these unserved areas is in accordance with both this Commission's and the MPSC's requirements. Attachment 1 shows the Phase 1 and Phase 2 Allband ILEC area and the areas for which Osirus has filed its petition with the Commission. As shown on Attachment 1, all but one of the unserved areas contained in the petition filed by Osirus are in the Phase 2 portion of the Allband study area.

As described in the Background section of these Comments, Allband is an ILEC for NECA and USF purposes and is currently providing telecommunications services in the Robbs Creek exchange in Michigan (a previously unserved area in Michigan). Allband has also undertaken all of the necessary steps to begin construction of facilities and to provide telecommunications service as an ILEC in the unserved areas for which Osirus has filed its petition with the Commission.

In accordance with this Commission's previous rulings, Allband has not filed a study area waiver with this Commission for the additional unserved areas because it is combining the Phase 2 previously unserved territory in Michigan with its existing Robbs Creek study area in Michigan. Besides the Commission's findings in its August 11, 2005 order granting waivers to Allband in Docket 05-174, the Commission in its earlier *American Samoa* Order stated:

“Study area waivers are required whenever a company seeks to create or reconfigure study areas except under three conditions: (a) a separately incorporated company is establishing a study area for a previously unserved area; (b) a company is combining previously

¹¹ Osirus Communications, Inc. Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support, filed on October 1st, 2007 in CC Docket No, 96-45, page 2.

unserved territory with one of its existing study areas in the same state; and (c) a holding company is consolidating existing study areas in the same state.”¹²

Allband is complying with the (b) requirement because it is combining the additional Phase 2 previously unserved territory in Michigan with its existing study area (the Robbs Creek exchange).

Allband also meets the more exacting NECA requirements to begin serving the additional Phase 2 unserved areas. In clarifying what approval is necessary for member companies to report data to NECA for regulated telephone service provided beyond its study area boundaries, NECA (Attachment 8, pp 3-4) states that:

“In the 2004 Skyline Order(fn8), the Commission clarified that it ‘has never enunciated an exception to its study area waiver requirements for unserved areas, nor has the term ‘unserved’ been defined for purposes of the study area waiver requirements.’(fn9) The Commission further concluded that treating an area as unserved when it was previously within an existing study area – regardless of whether service is currently provided to customers in the area – would be inconsistent with the purpose of the study area freeze(fn10). The Skyline Order reiterated that a study area waiver is not required ‘when a company is combining previously unserved territory with one of its existing study areas in the same state,’ But, consistent with the clarification of ‘unserved’, it would appear that this only applies to territory that is not within an existing study area.

Based on discussions with FCC Staff, state PUC decisions ‘unallocating’ an area without service from one company and transferring that service obligation to another company would not revise a ‘frozen’ study area boundary for federal regulatory purposes. In those situations, a FCC waiver would still be required.

¹²*American Samoa Government and the American Samoa Telecommunications Authority Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs*, CC Docket No. 96-45, AAD/USB File No. 98-41, Order released June 9, 1999, ¶ 10 (American Samoa). See also ¶ 9 of the *Request for Clarification Filed by the National Exchange Carrier Association, Inc., and Petitions for Waivers Filed by Alaska Telephone Company, Ducor Telephone Company and Kingsgate Telephone, Inc. Concerning the Definition of “Study Area” in the Part 36 Appendix-Glossary of the Commission’s Rules*, AAD 95-173, AAD 96-29, AAD 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160 (Com. Carr. Bur. July 16, 1996).

Thus, NECA will not recognize an area as ‘unserved’ unless it has never been included in any exchange carrier’s territory, no company has been authorized to serve the area, and no service in fact is currently provided.

To report data for unserved territories to NECA, either as a separate study area, or as part of an existing study area, the EC must provide NECA with documentation showing that these conditions are met.”¹³

The above authority describes the exact circumstance under which Allband is planning to provide its Phase 2 ILEC telecommunications services to the additional unserved areas in Michigan. The additional (Phase 2) territory to be served by Allband:

- Has never been included in any exchange carrier’s territory.
- No ILEC company has been authorized to serve the area, and
- No service in fact is currently provided by any ILEC.

The additional unserved Phase 2 areas will be combined within Allband’s existing ILEC study area. The documentation showing that these conditions have been met has been provided to NECA.

The Commission should thus deny Osirus’ petition because:

1. Allband, an existing ILEC in Michigan, is already planning to serve the unserved territory described in Osirus’ petition.

¹³ NECA Cost/Average Schedule Issue No. 8.5 – Study Area Waivers and Reporting Data for Lines Served Outside Frozen Study Area Boundaries dated 5/96 and revised 10/96, 6/97, 1/06. Attachment 8 to these Comments (see pages 3 and 4 in the Analysis section of the document). Footnotes included in the NECA Analysis are:

- Fn8 – See M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission’s Rules, CC Docket No. 96-45, Order, 19 FCC Rcd 6761 (2004).
- Fn9 – Id at ¶ 11.
- Fn10 – Id. The FCC repeated this position in the 2004 Sandwich Isles Order. See GTE Hawaiian Telephone Company, Inc. Application for Review of a Decision by the Common Carrier Bureau, Sandwich Isles Communication, Inc. Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification, AAD 97-82, Memorandum Opinion and Order, 19 FCC Rcd 22268 (2004).

2. Allband already meets all of the requirements of this Commission and the Michigan PSC to serve the unserved territory. Allband:

- Has a license to serve the territory from the MPSC.
- Is combining the unserved territory with its existing ILEC study area in Michigan in compliance with the Commission's Orders.
- Meets the stricter requirements of NECA to include the additional territories in the NECA pools and tariffs and has provided such documentation to NECA.

3. Allband has already begun the work (network design, financial analysis, RUS loan) to provide service to the territory in question.

IV. THE COMMISSION SHOULD CLARIFY ALLBAND'S EXISTING STATUS TO BE TREATED AS AN ILEC TO PROVIDE SERVICE TO THE UNSERVED AREAS.

Based upon the earlier authority, background, and regulatory history, Allband requests the Commission to clarify that Allband should be treated as the ILEC for the additional unserved territories described herein, and that Allband's previously granted waivers are equally applicable for purposes of proceeding to provide service in the unserved areas. Consistent with this request for clarification, Allband requests the Commission on its own motion to grant Allband any additional waivers, or clarifying interpretations of its Rules and orders (including previous waiver orders sought and/or granted for Allband) that are necessary and helpful to declare Allband as the ILEC for the subject additional unserved areas and to thereby prevent misinterpretations and confusion that can only serve to delay Allband's advanced planning to provide service to the additional unserved areas.

V. CONCLUSION AND RELIEF

The Commission's immediate denial of Osirus' petition, and the rendering of a clarifying interpretation of Allband's existing ILEC and waiver status to add the unserved areas to its existing area, will resolve any regulatory delay caused by the petition and allow Allband under its Phase 2 plan to concentrate on providing high quality basic and advanced services to the unserved areas in Michigan. This will further the public interest because it will result in the prompt provision of services by Allband for the local residents in the Phase 2 areas that are presently unserved, including the provision of new and reliable access to emergency services, and needed communications infrastructure to promote community services, economic development, and educational services.

Delay by the Commission in resolving the issues and granting the relief sought by Allband will financially harm Allband and its members/customers. Allband has already expended significant effort to begin provisioning service to the unserved areas described in Osirus' petition. Delay will deny Allband the opportunity to move forward with the provisioning of service to these unserved areas and to begin (a) participating in NECA pools and (b) receiving universal service funding. Delay will also deny customers in these unserved areas with the opportunity to receive from Allband quality basic and broadband services at just, reasonable and affordable rate levels.

Cooperatives have historically been formed by their members to serve areas where no for-profit telecommunications carrier would provide service. The formation of the Allband Cooperative to initially provide service as an ILEC in the Robbs Creek Exchange (Phase 1) and later to serve in Phase 2 other unserved areas in Michigan comports with this public service tradition. Allband's provision of service to previously unserved areas fulfills the Universal Service goals of Section 254 of the Act to provide high quality universally available basic,

advanced and interexchange network services at just, reasonable and affordable rate levels, with rate level and services reasonably comparable to those available in urban areas.

Allband therefore requests the Commission to:

1. Deny Osirus' petition in this docket;
2. To grant Allband's request for clarification that its ILEC status, and previous waiver requests, apply fully to the additional unserved areas that Allband proposes to serve on a prompt basis; and
3. To grant Allband such further and consistent relief that is lawful, reasonable, and appropriate.

Allband's requested relief will not harm Osirus and will not deny Osirus the opportunity to provide service in the areas it describes in its petition before the Commission. Osirus is a CLEC in Michigan and may, as a CLEC, provide service in these areas.

Respectfully submitted,

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Attorneys for
ALLBAND COMMUNICATIONS
COOPERATIVE

Date: January 3, 2008

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Attachment 1:	December 28, 2007 letter to the Federal Communications Commission from John M. Reigle, President, Allband Communications Cooperative
Attachment 2, Page 1:	Licensed Service Territories of Allband Communications Cooperative (Phase 1 and 2)
Page 2:	Licensed Service Territories of Allband Communications Cooperative (Phase 1 and 2) also showing areas where Osirus has requested a study area waiver
Attachment 3:	August 31, 2004 order of the Michigan Public Service Commission in MPSC Case No. U-14200
Attachment 4:	December 2, 2004 order of the Michigan Public Service Commission in MPSC Case No. U-14200
Attachment 5:	November 10, 2005 order of the Michigan Public Service Commission in MPSC Case No. U-14659
Attachment 6:	October 25, 2007 order of the Michigan Public Service Commission in MPSC Case No. U-15385
Attachment 7:	November 8, 2007 order of the Michigan Public Service Commission in MPSC Case No. U-15385
Attachment 8:	NECA Cost/Average Schedule Issue Number 8.5



December 28, 2007

Federal Communications Commission
Access Policy Division
Wireline Competition Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Re: Osirus Communications, Inc.
Petition for Waivers of the Commission's Rules to participate in NECA Pools and Tariffs and to
Obtain Accelerated USF Support - CC Docket No. 96-45

To Whom It May Concern:

On behalf of the Board of Directors of Allband Communications Cooperative, I am writing to express my opposition of the above referenced petition filed by Osirus Communications, Inc. (Osirus) and to request that the Commission immediately deny their petition for waivers.

Since 1997, I have lived and operated a business in the area that is now Allband's Robbs Creek Exchange. The closest Incumbent Local Exchange Carrier (ILEC) would not provide service to me even when I offered to pay an unrealistic sum of money. We have had unreliable cell phone service which is very expensive and limited to voice services. I could not send or receive faxes, nor check email; which are all abilities that most in today's age take for granted. As time went on I began to hear of people getting in car accidents, having health problems or worse. All of these stories ended the same way; they were not able to call 911 and had to drive for miles to get help. In this century, I believe that the telecommunication services we all rely on should be available to everyone and I assume that our state and federal governments would agree. The fact that a life-saving service like 911 was not readily available in our area due to a lack of telephone lines and poor cell phone coverage was unacceptable. After the incumbent telephone company that serves the exchanges around me promised and denied me a telephone several times, I obtained the support of my neighbors and proceeded to investigate the process needed to start my own telephone company.

After much investigation we discovered that our community was actually an unserved territory that had never been served by a phone company in the past. With support from various non-profit groups and the community, the then supporters and now Board Members decided to incorporate Allband as a non-profit cooperative. Allband is the first telephone cooperative in the state of Michigan and the first newly formed ILEC in decades. By organizing Allband as a non-profit cooperative, our members felt that they had ownership in something that would support and enhance the quality of life in our community, something that no for-profit company was willing to provide. We decided that the most efficient, reliable and advanced method of service would be an all fiber to the home system that would support our needs well into the future. Our ultimate goal with Allband was to not only provide reliable, advanced and affordable telephone and broadband services, but to provide a network that will overtime improve the quality of life, economy, education and health care facilities in Northeast Michigan.

When we originally discovered that our area was unserved or unassigned, we were shocked to find out that the State of Michigan had fifteen more unserved areas in the Lower and Upper Peninsulas. We knew that we had a long road ahead of us before we reached our goals in Robbs Creek, but we also

Allband Communications Cooperative

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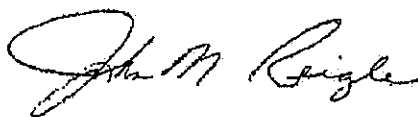
felt that once Robbs Creek was finished, we could expand to the surrounding unserved areas in order to offer the same advanced, dependable and affordable services. Over the last year, Allband has developed a plan to serve more unserved areas in the Lower Peninsula, which would not only bring telephone and broadband to the unserved, but strengthen our network and the network of the region with the help of other non-profit entities and consortiums.

It was disappointing to hear that a Competitive Local Exchange Carrier (CLEC) such as Osirus had essentially duplicated our past work and achievements in order to petition for ILEC status in the same areas Allband plans to serve. No other entity had an interest in these areas until Allband successfully achieved what many thought to be impossible, e.g., the acquisition of a USDA loan, NECA/USF support and the MPSC and FCC certifications, licenses and waivers that were required to establish a new ILEC and successfully deploy an advanced telecommunication network. Our cooperative is a non-profit and we pride ourselves on the fact that we use USF funds and NECA settlements to support our members, network, operations and construction costs; which is what I as a taxpayer have been told is the sole reason for the support. Allband has already invested a great deal of effort in our expansion due to engineering research, network design and other USDA Rural Development loan application procedures. I understand that the FCC and the MPSC feel that competition is good for the consumer, but having two companies compete for so few customers and in turn create barriers and/or delays which prevent service roll-out, is in my opinion, not in the best interest of the state's consumers.

Our cooperative was under the impression that once we met the requirements of the FCC and NECA as mentioned in our official comments, we could add these new territories to our current Robbs Creek study area. It was surprising to hear that due to the petition submitted by Osirus, NECA may delay the processing of our submission and wait for the FCC or the MPSC to decide who has ILEC rights to these new territories. It is my understanding that the MPSC does not have that authority and therefore the FCC may have to address this situation. Allband is confident that we meet the requirements established by NECA and the FCC and we are concerned that the petition of Osirus may result in the delay of our new build-out which we have already deeply invested in. Additionally, both companies are relying on USDA funding and according to the USDA, only one company will qualify for the loan which will result in only one company securing the funding to expand to these unserved areas.

Allband is a uniquely successful step forward for those who are trying to enhance the quality of life in Northeast Michigan. Since our first coop member received dial-tone in 2006, Allband has provided a level of customer service that is second to none and I hope that the FCC will see the proven and positive influence we have had and will continue to have on the State of Michigan. The FCC's support will allow Allband, who is already a licensed ILEC, to continue providing exceptional ILEC services to the unserved consumers in the new exchanges referenced in our license from the MPSC. Therefore, I respectfully request that the FCC deny Osirus's petition to become an ILEC and recommend that NECA add the referenced unserved areas into Allband's current Study Area in order to receive USF and NECA support. Such action will ensure that the referenced region will receive reliable advanced telephone, 911 and broadband services in a timely manner.

Respectively Submitted,

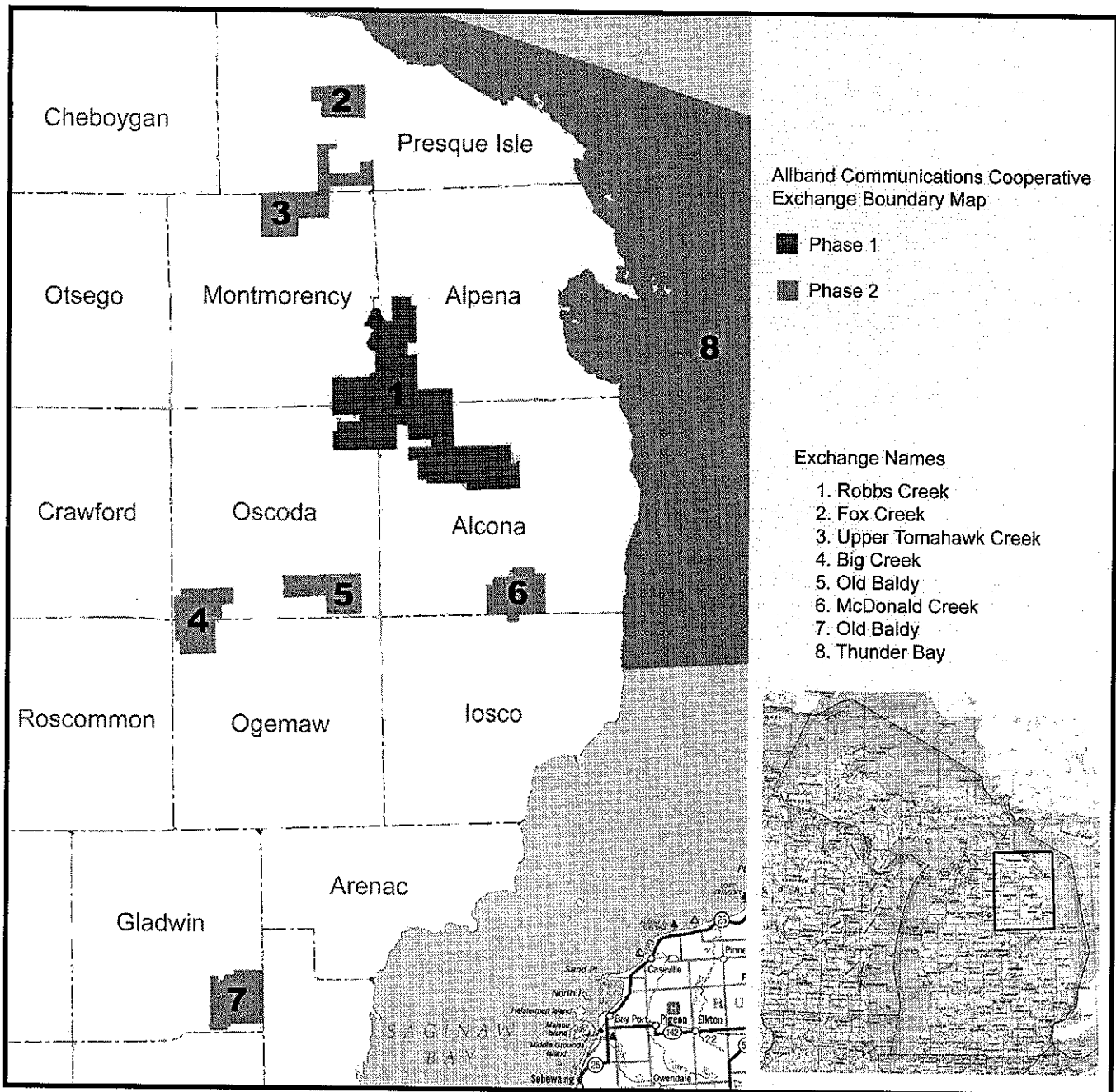


President,
Allband Communications Cooperative

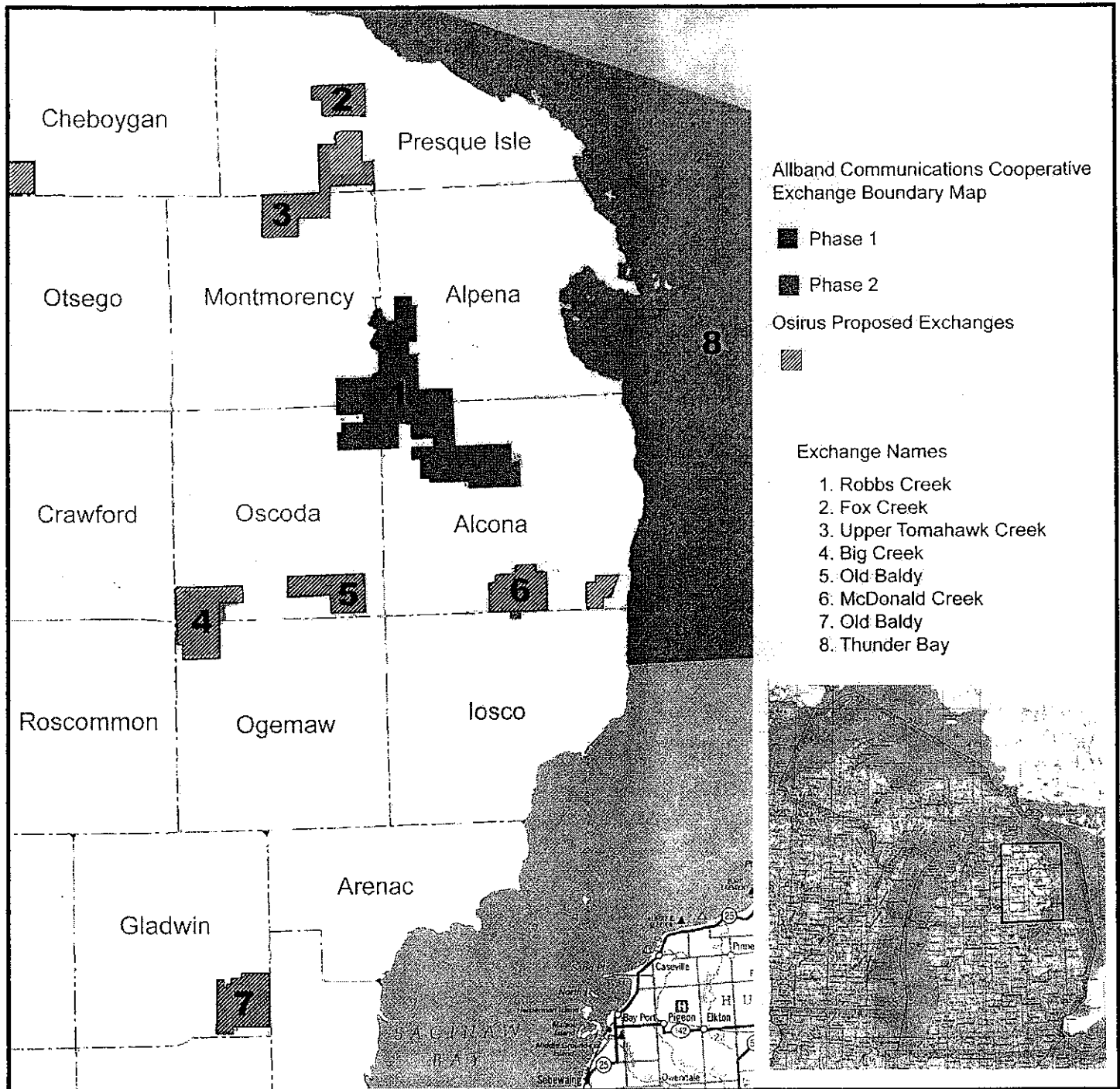
Allband Communications Cooperative

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Allband Phase 1 and Phase 2 - Licensed Service Territories



Allband Phase 1 and Phase 2 - Licensed Service Territories Also showing areas where Osirus has requested a study area waiver



Osirus has essentially requested a study area waiver for the same areas that Allband is already planning to serve as an ILEC. Osirus has apparently utilized an outdated exchange boundary map in its request because the areas that Allband is not planning to serve in Phase 2, but for which Osirus requested a waiver in Oscoda, Alcona and Presque Isle counties are already served by another ILEC based on tariffs filed with the Michigan Public Service Commission (MPSC).

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
ALLBAND COMMUNICATIONS COOPERATIVE)
for a temporary license to provide local exchange)
service.)
_____)

Case No. U-14200

At the August 31, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On July 9, 2004, Allband Communications Cooperative (Allband) filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., for a license to provide basic local exchange service in a proposed new exchange service territory covering portions of Alcona, Alpena, Montmorency, and Oscoda counties. It also requested a temporary license.

MCL 484.2301(2) states: "Pending a determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed 1 year." Allband states that it seeks a temporary license on an expedited basis "because time is of the essence." Application, p. 3. Allband seeks to file for universal service funds and federal loan funds, and to promptly negotiate interconnection agreements, among other things. Allband alleges that the grant of a temporary license will aid those efforts.

After a review of the application and testimony, the Commission finds that approval of a temporary license is in the public interest.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. Allband should be granted a temporary license.

THEREFORE, IT IS ORDERED that:

A. Allband Communications Cooperative is granted a temporary license to provide basic local exchange service in the proposed new exchange service territory. The temporary license shall expire upon issuance of the final order granting or denying its application for a permanent license.

B. Allband Communications Cooperative shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 et seq., including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Allband Communications Cooperative shall submit its tariff reflecting the services that it will offer and identifying the territory in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner


/s/ Laura Chappelle
Commissioner

By its action of August 31, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

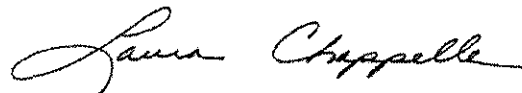
MICHIGAN PUBLIC SERVICE COMMISSION



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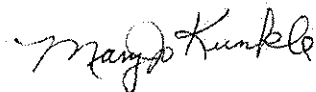


Commissioner



Commissioner

By its action of August 31, 2004.



Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
ALLBAND COMMUNICATIONS COOPERATIVE)
for a temporary and permanent license to provide)
basic local exchange service in the proposed)
Robbs Creek Exchange.)
_____)

Case No. U-14200

At the December 2, 2004 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

On July 9, 2004, Allband Communications Cooperative (Allband) filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., for a license to provide basic local exchange service in the proposed Robbs Creek Exchange. On August 31, 2004, the Commission granted Allband a temporary license.

At a hearing on November 23, 2004, Allband presented the testimony and exhibits of John M. Reigle, its President. At the close of the hearing, the parties waived compliance with the provisions of Section 81 of the Michigan Administrative Procedures Act, MCL 24.281.

After a review of the application and testimony, the Commission finds that approval of the application is in the public interest. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. Approval of the request for a license

to provide basic local exchange service will expand the opportunities for competition.

Accordingly, the application should be approved. The grant of a license is conditioned on full compliance with the provisions of the MTA, as well as the anti-slamming procedures adopted in Case No. U-11900 and the number reclamation process adopted in Case No. U-12703. Failure to comply fully may result in revocation of the license or other penalties. Further, the grant of a license is conditioned upon the provision of service to customers within a reasonable time. Failure to do so may result in revocation of the license. Finally, the Commission notes that any numbers obtained by the applicant are a public resource and are not owned by the applicant. Consequently, if the applicant fails to provide service or goes out of business, any numbers assigned to it are subject to reclamation.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. Allband possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to all residential and commercial customers within the geographic area of the license and intends to provide service within one year from the date of this order.
- c. Granting Allband a license to provide basic local exchange service in the requested area will not be contrary to the public interest.

THEREFORE, IT IS ORDERED that:

A. Allband Communications Cooperative is granted a license to provide basic local exchange service in the proposed Robbs Creek Exchange.

B. Allband Communications Cooperative shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 et seq., including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Allband Communications Cooperative shall submit its tariff reflecting the services that it will offer and identifying the exchange in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ J. Peter Lark
Chair

By its action of December 2, 2004.

/s/ Robert B. Nelson
Commissioner

/s/ Mary Jo Kunkle
Its Executive Secretary

/s/ Laura Chappelle
Commissioner

THEREFORE, IT IS ORDERED that:

A. Allband Communications Cooperative is granted a license to provide basic local exchange service in the proposed Robbs Creek Exchange.

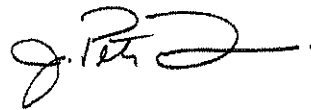
B. Allband Communications Cooperative shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 et seq., including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Allband Communications Cooperative shall submit its tariff reflecting the services that it will offer and identifying the exchange in which it will offer service.

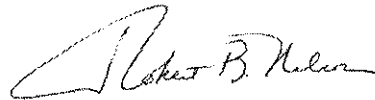
The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION



Chair

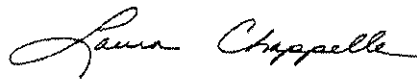


Commissioner

By its action of December 2, 2004.



Its Executive Secretary



Commissioner

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
ALLBAND COMMUNICATIONS COOPERATIVE)
for designation as an eligible telecommunications)
carrier pursuant to Section 214(e) of the)
Telecommunications Act of 1996.)
_____)

Case No. U-14659

At the November 10, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

OPINION AND ORDER

On October 12, 2005, Allband Communications Cooperative (Allband), filed an application, pursuant to Section 214(e)(2) of the federal Communications Act of 1934, as amended, 47 USC § 214(e)(2), for designation as an eligible telecommunications carrier (ETC) for purposes of universal service fund (USF) support.

Allband requests that the Commission enter an order immediately designating it as an ETC in the rural telephone company study area identified as Robbs Creek Exchange. Allband asserts that the Commission may act on its application without the necessity of a public hearing.

After reviewing Allband's application, the Commission finds that it should be granted because the Commission is persuaded that ETC designation for Allband promotes competition and is in the public interest. The application filed by Allband for ETC designation for purposes of receiving

USF support is granted, with the understanding that Allband will comply after October 1, 2006 with enhanced service requirements, as required by the FCC Report and Order 05-46, CC Docket 96-45, and the Commission's October 18, 2005 order in Case No. U-14530.

Moreover, the Commission concludes, as it did in its November 20, 2001 order in Case No. U-13145, that it need not solicit comment, which would only further delay action on the application.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. Allband's application for designation as an ETC for purposes of USF support should be granted.

THEREFORE, IT IS ORDERED that the application filed by Allband Communications Cooperative for designation as an eligible telecommunications carrier for purposes of universal service fund support is granted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

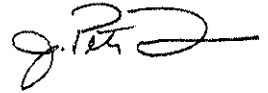
/s/ Monica Martinez
Commissioner

By its action of November 10, 2005.

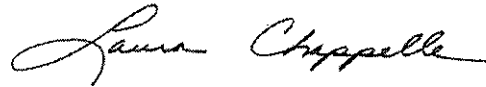
/s/ Mary Jo Kunkle
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of November 10, 2005.



Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
ALLBAND COMMUNICATIONS COOPERATIVE)
for a license to provide basic local exchange service)
in seven currently unserved areas in Alcona, Alpena,)
Presque Isle, Montmorency, Gladwin, Ogemaw,)
and Oscoda counties.)
_____)

Case No. U-15385

At the October 25, 2007 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

OPINION AND ORDER

On August 31, 2007, Allband Communications Cooperative (Allband) filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, for a license to provide basic local exchange service in seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda counties. It also requested a temporary license.

MCL 484.2301(2) states: "Pending a determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed 1 year." Allband states that it seeks a temporary license to allow it to begin the prompt negotiation of interconnection agreements.

After a review of the application and testimony, the Commission finds that approval of the application is in the public interest.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, MCL 484.2101 *et seq.*; 1969 PA 306, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17101 *et seq.*

b. Allband should be granted a temporary license.

THEREFORE, IT IS ORDERED that:

A. Allband Communications Cooperative is granted a temporary license to provide basic local exchange service in seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda counties, as described in the application. The temporary license shall expire upon issuance of the final order granting or denying its application for a permanent license.

B. Allband Communications Cooperative shall provide basic local exchange service under the temporary license in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of MCL 484.2358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service under the temporary license, Allband Communications Cooperative shall submit its tariff reflecting the services that it will offer and identifying the exchanges in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Orjiakor N. Isiogu

Chairman

(S E A L)

/s/ Monica Martinez

Commissioner

/s/ Steven A. Transeth

Commissioner

By its action of October 25, 2007.

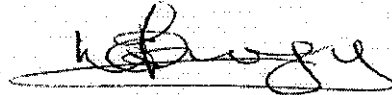
/s/ Mary Jo Kunkle

Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of October 25, 2007.



Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
ALLBAND COMMUNICATIONS COOPERATIVE)
for a license to provide basic local exchange service)
in seven currently unserved areas in Alcona, Alpena,)
Presque Isle, Montmorency, Gladwin, Ogemaw,)
and Oscoda counties.)
_____)

Case No. U-15385

At the November 8, 2007 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

OPINION AND ORDER

On August 31, 2007, Allband Communications Cooperative (Allband) filed an application, under the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, to expand its license to provide basic local exchange service to permit the cooperative to provide service in seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda counties. Allband also requested approval of a temporary license.¹ On October 19, 2007, Allband submitted a minor revision to its application.

¹On October 25, 2007, Allband was granted a temporary license to provide service in these areas.

Allband served a notice of opportunity to comment on other local exchange carriers and all county clerk offices in the area the company plans to serve. The comment due date was October 29, 2007. Only two comments were filed with the Commission.

Jack Decker, an acknowledged non-resident in any of the affected areas, noted in his comments that Osirus Communications, Inc. (Osirus), had filed an application to serve some of the same exchanges.² Mr. Decker expressed concern that action on Osirus' application should not adversely affect Allband's application. He also stated that neither Osirus nor Allband should be designated as the incumbent local exchange carrier (ILEC) at this time. He also requested that the Commission question Allband as to whether it will offer local calling service or broadband service to adjacent exchanges.

Verizon North Inc. and Contel of the South, Inc. d/b/a/ Verizon North Systems (Verizon) stated that it has no objections to Allband's application. Verizon did raise questions concerning whether "Allband will have the necessary facilities within its service area adjacent to Verizon's exchanges to interconnect with Verizon at the exchange boundaries." Verizon's comments, p. 2.

As the Commission has noted in the past, "[i]ssues regarding ILEC status and the array of services to be offered, or interconnection negotiation terms, are not relevant to this licensing proceeding, which addresses only whether the company will be granted the opportunity to provide service." *See*, October 9, 2007 order in Case No. U-15356, p. 2.

The Commission finds that approval of Allband's application is in the public interest. The expansion of the license is conditioned on compliance with the anti-slamming procedures adopted in Case No. U-11900, the number portability provisions of the MTA, and the number reclamation process adopted in Case No. U-12703. The expansion of the license is conditioned upon the

²*See*, Case No. U-15356.

provision of service to customers in the added exchanges within a reasonable time. Failure to comply fully with those procedures may result in revocation of the license and other penalties.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, MCL 484.2101 *et seq.*; 1969 PA 306, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17101 *et seq.*

b. Amending Allband's license to provide basic local exchange service in the currently unserved areas is in the public interest.

THEREFORE, IT IS ORDERED that:

A. The license of Allband Communications Cooperative to provide basic local exchange service is amended to include seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda counties described in its application.

B. Allband Communications Cooperative shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of MCL 484.2358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service in the areas added to the license by this order Allband Communications Cooperative shall submit its tariff reflecting the services that it will offer and identifying the additional exchanges in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Orjiakor N. Isiogu
Chairman

(S E A L)

/s/ Monica Martinez
Commissioner

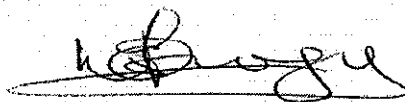
/s/ Steven A. Transeth
Commissioner

By its action of November 8, 2007.

/s/ Mary Jo Kunkle
Its Executive Secretary

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

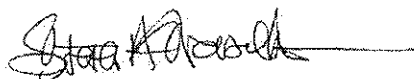
MICHIGAN PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

By its action of November 8, 2007.



Its Executive Secretary

COST/AVERAGE SCHEDULE ISSUE

Issue Number: 8.5 **STUDY AREA WAIVERS AND REPORTING DATA
FOR LINES SERVED OUTSIDE FROZEN STUDY
AREA BOUNDARIES**

Issue Date: 5/96 **(Revised 10/96, 6/97, 1/06)**

Issue: **What approval is necessary for member exchange carriers to
report data to NECA for regulated telephone service provided
beyond its study area boundaries?**

Issue

If a NECA member exchange carrier directly provides regulated local telephone exchange service beyond its local exchange franchise or service territory, determined as of November 15, 1984, must it obtain a waiver of the FCC's "frozen study area" rule before reporting data on the associated costs, loops, etc. to NECA for USF and pooling purposes?

Rules

The Part 36 rules state that "study area boundaries shall be frozen as they are on November 15, 1984."¹ The study area boundaries are frozen for separations purposes with USF calculated separately for each study area. The rule was promulgated by the Commission in response to concerns, voiced by the Federal-State Joint Board in CC Docket 80-286, that telephone companies might attempt to "spin off" high cost exchanges within existing study areas as separate companies to maximize USF support.² The Joint Board described its understanding of the new definition as follows:

"Under the [frozen study area] approach an existing company study area purchased by a holding company which owned other companies within the same state could continue to be treated separately for separations purposes. Areas in which telephone service was instituted for the first time could also be treated as a separate study area if separately

1 47 C.F.R. § 36 Appendix-Glossary.

2 Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Decision and Order, 50 Fed Reg. 939 (1985).

COST/AVERAGE SCHEDULE ISSUE

Rules (Cont'd)

incorporated. In either case, the parent company would also have the option of folding the new service territory into one of its existing companies and using the average NTS costs for the expanded service area in determining the high cost assistance. We expect this to be the case when the benefits of consolidated operations exceed the reduction in high cost support. However, companies would be prohibited from setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support. This definition would facilitate administration of the high cost fund, eliminate record keeping burdens, and remove the disincentive for purchase of high cost companies or expansion of service into high cost areas³

Analysis

Since the FCC does not regulate local exchange service territories or franchises per se, it appears that the "frozen study area rule" applies only to telephone company accounting, separations, and tariffing practices.⁴ Under this interpretation, a telephone company would not be required to obtain a waiver of the rule to offer local exchange service outside its study area boundary, but would be required to obtain a waiver to include the costs and revenues associated with providing such service in its interstate tariffs and USF data reports. This, in turn, suggests that NECA should not accept data on investment, expenses, revenues or lines associated with access service provided outside of a company's frozen study area boundary unless the FCC grants a waiver of the study area rule.

3 MTS and WATS Market Structure, CC Docket No. 78-72, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984) at 48337-38 (Joint Board Order) (*emphasis added*).

4 The Commission has broad jurisdiction over rates and accounting methods. The part 32 rules, for example, establish specific accounting rules for telephone companies. Part 36, which contains the "frozen study area rule" in its Appendix-Glossary, provides specific direction to telephone companies with respect to allocation of investment, revenues, and expenses, taxes, and reserves between the state and interstate jurisdictions. Part 36 rules also govern USF expense adjustment calculations and USF data reporting to NECA. The Part 69 rules provide direction regarding access tariffs, pooling, and NECA governance and operations.

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Analysis (Cont'd)

To resolve member company questions regarding the application of this rule, NECA sent a letter to the Commission in 1995 seeking clarification of study area waiver requirements.⁵ On July 16, 1996 the Commission released a Memorandum Opinion and Order (MO&O)⁶ responding to NECA's letter of November 29, 1995. In the MO&O, the Commission clarified the frozen study area boundary rule by identifying the circumstances under which waivers would not be necessary. Study area waivers are required whenever a company seeks to create or reconfigure study areas except when:

- a) A separately incorporated company is establishing a study area for a previously unserved territory.
- b) A company is combining a previously unserved territory with one of its existing study areas in the same state.
- c) A holding company is consolidating existing study areas in the same state.

The Commission considered, but was not persuaded, that a standard should be established that would eliminate the need for waiver petitions for transfers of exchanges serving small numbers of subscribers.⁷

The MO&O did not provide a definition for "unserved" territory. Since the MO&O was released, however, this issue has arisen in the context of several orders responding to petitions for waiver of the frozen study area rule and other related rules.

In the 2004 Skyline Order⁸, the Commission clarified that it "has never enunciated an exception to its study area waiver requirements for unserved areas, nor has the term 'unserved' been defined for purposes of the study area waiver requirements."⁹ The Commission further concluded that treating an area as unserved when it was previously

⁵ Letter from Richard A. Askoff, NECA, to Kenneth Moran, Chief, FCC Accounting and Audits Division (November 29, 1995).

⁶ Request for Clarification Filed by the National Exchange Carrier Association, Inc. and Petitions for Waivers Filed by Alaska Telephone Company, Ducor Telephone Company and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 11 FCC Rcd 8156 (1996).

⁷ *Id.* at ¶ 8.

⁸ See M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules, CC Docket No. 96-45, Order, 19 FCC Rcd 6761 (2004).

⁹ *Id.* at ¶ 11.

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within an existing study area – regardless of whether service is currently provided to customers in the area – would be inconsistent with the purpose of the study area freeze.¹⁰ The Skyline Order reiterated that a study area waiver is not required “when a company is combining previously unserved territory with one of its existing study areas in the same state.” But, consistent with the clarification of “unserved”, it would appear that this only applies to territory that is not within an existing study area.

Based on discussions with FCC Staff, state PUC decisions “unallocating” an area without service from one company and transferring that service obligation to another company would not revise a “frozen” study area boundary for federal regulatory purposes. In these situations, a FCC waiver would still be required.

Thus, NECA will not recognize an area as “unserved” unless it has never been included in any exchange carrier’s territory, no company has been authorized to serve the area, and no service in fact is currently provided.

To report data for unserved territories to NECA, either as a separate study area, or as part of an existing study area, the EC must provide NECA with documentation showing that these conditions are met.

Conclusion

Except for those situations described in the preceding paragraph, NECA will not accept data for pooling and USF purposes for services provided to customers outside the frozen study area boundaries unless an FCC study area waiver is obtained. This includes reporting of access revenues from customers outside the frozen study area. In the absence of such a waiver, all costs associated with the facilities providing service outside the study area boundaries should be removed prior to application of the separations process and USF reporting. Additionally, any associated traffic measurements should be adjusted accordingly. Part 64-type principles should be applied to exclude costs of providing out-of-boundary services (see attachment A for cost companies and attachment B for average schedule companies).

This issue addresses only those situations where a NECA member exchange carrier provides local exchange service directly to subscribers outside of its frozen study area.¹¹ NECA does not take any position on whether non-member carriers are subject

¹⁰ *Id.* The FCC repeated this position in the 2004 Sandwich Isles Order. See GTE Hawaiian Telephone Company, Inc. Application for Review of a Decision by the Common Carrier Bureau, Sandwich Isles Communications, Inc. Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification, AAD 97-82, Memorandum Opinion and Order, 19 FCC Rcd 22268 (2004).

¹¹ For example, this issue does not apply to jointly provided services between member exchange carriers.

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to the FCC's accounting rules. Member companies that provide local exchange services outside of their frozen study area indirectly (i.e., through a separate subsidiary, partnership, joint venture, consortium or similar structure) are required to comply with the affiliate transaction rules specified in Parts 32 and 64 of the Commission's rules. Costs and revenues associated with unregulated services provided by NECA member companies, and regulated services provided by non-member affiliates of NECA companies, are excluded from NECA pooling and USF processes. This treatment is applicable for all data months open under NECA's twenty-four month settlement window.

It is important to note that this issue only addresses circumstances in which NECA will or will not accept data reporting for USF and pooling purposes. NECA is not taking any position on whether an exchange carrier can offer service outside its current study area.

COST/AVERAGE SCHEDULE ISSUE

Issue Number: 8.5 ATTACHMENT A

Exclusion of Data Associated With Cost Issue 8.5 Based on Part 64 Type Principles

Cost Issue 8.5 addresses data reportable to NECA for regulated telephone service provided beyond a member exchange carrier study area boundary. Except for certain limited situations, described in Cost Issue 8.5, NECA will not accept data for pooling and USF purposes for services provided to customers outside the frozen study area boundaries unless an FCC study area waiver is obtained. In the absence of such a waiver, all costs associated with the facilities providing service outside the study area boundaries should be excluded prior to application of the separations process and USF reporting. Additionally, any associated traffic measurements should be adjusted accordingly. Part 64-type principles should be applied to exclude the cost of providing out-of-boundary services.

The facilities used to provide out-of-boundary services could include loop, end office, and transport facilities, including tandem switching and trunking that transport traffic to and from the out-of-boundary subscriber. Investment and related expenses associated with any of these facilities should be excluded from the amounts subject to separations and from the amounts reported for USF. Appropriate adjustments should be made to the investment and related expenses associated with central office switching, cable and wire facilities, and circuit equipment investment. These adjustments should be made for all facilities that handle traffic for out-of-boundary customers. This should be done using direct assignment based on accounting records where available. Absent specific investment records, attribution based on an allocator logically related to the cost causation should be used. For example, a relationship based on out-of-boundary loops to total loops could be used to apportion investment associated with out-of-boundary services.

Plant-related expense such as maintenance, depreciation, property taxes, general support, network support, and corporate operations should be allocated based on the relative out-of-boundary investment and in-boundary investment. If any such expenses are separately identified they may be directly assigned. The basic traffic separations factors used to apply to in-boundary facilities' cost such as dial equipment minutes, exchange trunk minutes, and conversation minute miles should be adjusted to exclude the usage of out-of-boundary services.

COST/AVERAGE SCHEDULE ISSUE

Issue Number: 8.5 ATTACHMENT B

Average Schedule Reporting Considerations

Average schedule companies that provide local exchange service directly to subscribers outside their frozen study areas, should adjust their data to remove out-of-boundary lines, facilities, etc., so that it is not reported to NECA for pooling purposes. NECA's average schedule pool procedures provide specific instructions on how each element should be adjusted. Listed below are specific areas that require data reporting adjustments when an average schedule company provides out-of-boundary service.

Access Lines and Minutes

Report access lines only for end user customers located within the "frozen" study area and the associated access minutes. Minutes to/from lines used to provide service outside the study area boundary are excluded.

Line Haul

If a local switch serves out-of-boundary subscribers exclusively, then line haul data for all circuits connected to the switch should be excluded from reporting to NECA. If a switch, whether local end office, host, remote or tandem, serves subscribers both inside and outside of the study area boundary, line haul data for circuits connecting the switch to the network must be adjusted to remove the portion serving subscribers outside the study area boundary.

Intertoll Facilities

The calculation of intertoll dial circuits that are reported for average schedule settlements must be adjusted to exclude the portion of intertoll circuits that serve access lines to subscribers outside of the study area boundary.

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In the Matter of)	
)	
OSIRUS COMMUNICATIONS, INC.)	
)	CC Docket No. 96-45
Petition for Waivers of the Commission’s)	
Rules to Participate in NECA Pools and)	DA 07-4873
Tariffs and to Obtain Accelerated USF)	
Support)	

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

SEE ATTACHED SERVICE LIST

Mary E. Turney

Patricia A. Tooker, Notary Public
Eaton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: April 5, 2011.

Service List
CC Docket No. 96-45
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